

12/18/09

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges

MJ MUELLER, LLC d/b/a BENJAMIN FRANKLIN
PLUMBING and its Alter Ego, BoRyJer, LLC d/b/a
BENJAMIN FRANKLIN PLUMBING

and

MICHAEL J. MUELLER, AN INDIVIDUAL

and

UNITED ASSOCIATION OF PLUMBERS AND
GASFITTERS, LOCAL UNION NO. 34

Cases 18-CA-18216
18-CA-18419
18-CA-18504

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MOTION FOR PARTIAL DEFAULT JUDGMENT

Counsel for the General Counsel hereby moves that the Administrative Law Judge issue an appropriate Order to Show Cause why a Partial Default Judgment should not be entered against MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing (MJM) and Michael J. Mueller, An Individual (Mueller)¹ and fix a time for the filing of briefs by all parties in this proceeding, the brief of the General Counsel being submitted herewith. A Table of Exhibits, the exhibits and a Certificate of Service are included with this Motion.

In support of this Motion, Counsel for the General Counsel alleges that Respondent MJM and Respondent Mueller have failed to file Answers to the

¹ This Motion does not apply to Respondent BoRyJer, LLC d/b/a Benjamin Franklin Plumbing as it filed an Answer to the Compliance Specification on December 1, 2009.

Compliance Specification and Notice of Hearing in this matter, as required by Section 102.56 (a) of the Board's Rules and Regulations. Accordingly, the only issues before the Board as to Respondents MJM and Mueller are legal in nature and there is no issue of disputed fact warranting a hearing as to them.

Dated at Minneapolis, Minnesota this 18th day of December, 2009.

/s/ David M. Biggar

David Biggar, Counsel for the General Counsel
Eighteenth Region
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges

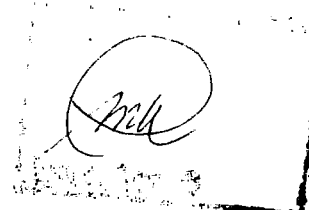
MJ MUELLER, LLC d/b/a BENJAMIN FRANKLIN
PLUMBING and its Alter Ego, BoRyJer, LLC d/b/a
BENJAMIN FRANKLIN PLUMBING

and

MICHAEL J. MUELLER, AN INDIVIDUAL

and

UNITED ASSOCIATION OF PLUMBERS AND
GASFITTERS, LOCAL UNION NO. 34



Cases 18-CA-18216
18-CA-18418
18-CA-18504

**BRIEF OF COUNSEL FOR THE GENERAL COUNSEL
IN SUPPORT OF MOTION FOR PARTIAL DEFAULT JUDGMENT**

United Association of Plumbers and Gasfitters, Local Union No. 34 (Union) filed charges in the above-captioned cases, which led to issuance of complaint and a hearing before Administrative Law Judge David I. Goldman on October 16, 2007. Thereafter, Judge Goldman issued a decision. On May 30, 2008, the Board affirmed the findings of Judge Goldman and concluded that Respondent MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing (Respondent MJM) violated the Act, including by unlawfully discharging employees Steven LaMont and Donald Doty. *Benjamin Franklin Plumbing*, 352 NLRB 525 (2008). On November 25, 2008, the United States Court of Appeals for the Eighth Circuit entered a judgment enforcing the Board's Order (Exhibit 1) based on

a Stipulation for Entry of Consent Judgment agreed to by Respondent MJM on November 25, 2008. The Court's Mandate issued on February 27, 2009. (Exhibit 2)

In dispute is the amount of backpay owing to employees LaMont and Doty as a result of the Board's Order. After an investigation, on October 29, 2009, the Regional Director for Region 18 issued a Compliance Specification and Notice of Hearing (hereinafter Specification) (Exhibit 3). The Specification alleges that Respondent MJM has not offered employees LaMont or Doty reinstatement as required by the Board's Order. In addition, the Specification sets forth the backpay owed employees LaMont and Doty for the backpay period described in the Specification.

The Specification also alleges that Respondents MJM and BoRyJer, LLC d/b/a Benjamin Franklin Plumbing (BoRyJer) are alter egos, and therefore, that BoRyJer is liable for the backpay set forth in the Specification. Finally, the Specification alleges that Michael J. Mueller (Mueller) should be personally liable for the backpay set forth in the Specification. The Specification also sets forth factual allegations to support holding Mueller personally liable. These allegations include that Mueller controls MJM and BoRyJer; that Mueller commingled his personal assets with the assets of MJM and BoRyJer; and that Mueller established BoRyJer in order to evade MJM's obligations under the Act.

The Specification states that each party identified in the Specification – MJM, Mueller individually, and BoRyJer – was to file an answer to the Specification on or before November 19, 2009. None of the three filed its answer by that date. In a letter dated November 20, 2009, the Regional Director advised each party that each must file an answer by November 27, 2009, or the Region would file a Motion for Default

Judgment (Exhibit 5). Only Counsel for BoRyJer contacted the Regional Office by November 27, and subsequently filed an answer on December 1, 2009. However, the Answer filed by BoRyJer is clear that it is filed solely on behalf of BoRyJer (Exhibit 6). Thus, at no time have Respondent MJM or Mueller filed answers. Accordingly, as to Respondent MJM and Mueller, neither has contested the allegations of the Specification.

ARGUMENT

Counsel for the General Counsel submits that the pleadings in the instant case, together with the attached exhibits, demonstrate that there are no issues of fact in this proceeding as to Respondent MJM and Mueller.

First, the record establishes that the General Counsel properly served the Specification. Section 102.113 of the Board's Rules and Regulations provides that specifications shall be served on a party by certified mail. Moreover, service is effective upon mailing, and service can be proven by affidavits of service. *Apex Electric Services*, 350 NLRB 40 fn. 1 (2007); *CCY New Worktech, Inc.*, 329 NLRB 194 (1999); *National Automatic Sprinklers, Inc.*, 307 NLRB 481, 482, fn. 1 (1992). Thus, General Counsel satisfied the service requirement by serving a copy of the Specification by certified mail to each Respondent's address, as is evident from Exhibit 4.

Second, Michael Mueller accepted service of the Specification. (Exhibit 7). This constitutes service on his company, MJM, as Mueller owned MJM, 352 NLRB at 526. In addition, the Region, by the Regional Director's letter dated November 20, 2009, effected service when it resent the Specification via regular mail, as the Postal Service did not return the November 20 letter and enclosure to the Regional Office.

Because no answer was filed by Respondent MJM or by Mueller within 21 days, or within the extension of time granted by the November 20 letter, the allegations of the Specification shall be deemed to be true as to all allegations unrelated to BoRyJer.

Board's Rules and Regulations, Section 102.56.

With regard to holding Mueller personally liable, Counsel for the General Counsel is aware of a recent case where the Board refused to grant default judgment and impose personal liability. See, *Signman, Inc.*, 354 NLRB No. 96 (October 29, 2009). However, the instant matter is significantly different than the facts in the *Signman* case. First, the specification in *Signman* sought to impose personal liability on the owner of the alter ego. *Id.*, slip. op. at p. 2. In the instant case, the Specification does not seek to impose personal liability on Robert Mueller, the ostensible owner of BoRyJer. Rather, the Specification in this matter seeks to impose personal liability on Michael Mueller, the owner of Respondent MJM. Second, in *Signman* the Board concluded that the specification failed to set forth sufficiently clear or specific factual bases for supporting a finding of personal liability under a veil-piercing theory. *Id.* In the instant case, the Specification specifically pleads commingling of funds and creation of BoRyJer to avoid backpay liability – neither of which is denied by Respondent MJM or by Mueller – and both of which are sufficient to impose personal liability in a default judgment case. *Id.* at p. 4, fn. 9.

CONCLUSION

As Respondent MJM and Michael Mueller individually, have failed to file answers to the Specification, Counsel for the General Counsel moves that the administrative law judge grant the Motion for Partial Default Judgment as to them, and that the

administrative law judge conclude that Respondent MJM and that Michael Mueller individually and personally, are jointly and severally liable for the backpay amounts set forth in the Specification for employees LaMont and Doty.

Dated at Minneapolis, Minnesota this 18th day of December, 2009.

/s/ David M. Biggar

David M. Biggar
Counsel for the General Counsel
Region 18, National Labor Relations Board
Suite 790, 330 South Second Avenue
Minneapolis, MN 55401

Attachments

TABLE OF EXHIBITS

1. Eighth Circuit Court Judgment dated November 25, 2008
2. Eighth Circuit Court of Appeals Mandate dated February 27, 2009
3. Compliance Specification and Notice of Hearing dated October 29, 2009
4. Affidavit of Service of Compliance Specification dated October 29, 2009
5. Letter from Regional Director Marlin O. Osthus dated November 20, 2009
6. BoRyJer Answer to Compliance Specification dated December 1, 2009
7. Proof of Service of Compliance Specification to Michael J. Mueller

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 08-3385

National Labor Relations Board,

Petitioner

v.

MJ Mueller, LLC, doing business as Benjamin Franklin Plumbing,

Respondent

Appeal from National Labor Relations Board
(18-CA-18216)
(18-CA-18419)
(18-CA-18504)

JUDGMENT

Upon stipulation and consent of the parties, the Consent Judgment attached hereto and made a part hereof, is granted.

November 25, 2008

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

GC EXHIBIT

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No. 08-3385
Petitioner	:	
v.	:	Board Case Nos.
	:	18-CA-18216
	:	18-CA-18419
MJ MUELLER, LLC D/B/A BENJAMIN	:	18-CA-18504
FRANKLIN PLUMBING	:	
	:	
Respondent	:	

CONSENT JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for enforcement of its order against Respondent, MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, its officers, agents, successors, and assigns, enforcing its order dated May 30, 2008, in Case Nos. 18-CA-18216; 18-CA-18419; 18-CA-18504; and Respondent and the Board having advised this Court of their desire to dispose of this matter by entry of a consent judgment enforcing the Board's Order;

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the said Order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondent, MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, its officers, agents, successors, and assigns, abide by and perform the directions of the Board set forth in its Order. (See attached Order and Appendix)

Mandate shall issue forthwith.

DATED: NOV 25 2008

NATIONAL LABOR RELATIONS BOARD

v.

MJ MUELLER, LLC D/B/A BENJAMIN FRANKLIN PLUMBING

ORDER

The Respondent, MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, North Branch, Minnesota, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from**
 - (a) Interrogating any employee regarding his union sympathies.**
 - (b) Threatening any employee with job loss for himself or other employees because of employee support for union representation.**
 - (c) Stating or implying to any employee that the Respondent is reducing hours that the employee reported on his timecard because of the employees' support for the Union.**
 - (d) Directing any employee not to discuss a pay issue with another employee.**
 - (e) Failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative for the following bargaining unit of its employees:**

All full-time and regular part-time journeyman and apprentice plumbers employed by the Respondent at or out of its North Branch, Minnesota location; excluding all other employees, guards and supervisors as defined by the Act.

- (f) Failing and refusing to provide information to the Union pursuant to its request of September 26, 2007.**
 - (g) Discharging employees in retaliation for activity protected by the Act.**
 - (h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.**
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.**
 - (a) Recognize and, upon the Union's request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.**

- (b) Furnish the Union with the information it requested on September 26, 2007.
- (c) Within 14 days from the date of this Order, offer Steven LaMont and Donald Doty full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (d) Make employees Steven LaMont and Donald Doty whole with interest, in the manner set forth in the remedy section of this decision and order for any loss of earnings or other benefits resulting from their discharge.
- (e) Within 14 days from the date of this Order, remove from its files, including Steven LaMont and Donald Doty's personnel files, any reference to their discharge, and within 3 days thereafter notify Steven LaMont and Donald Doty in writing that this has been done and that the discharge will not be used against them in any way.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in North Branch, Minnesota, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2006.
- (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES
POSTED PURSUANT TO A JUDGMENT OF THE
UNITED STATES COURT OF APPEALS ENFORCING AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union sympathies.

WE WILL NOT threaten you with job loss because of your support for union representation.

WE WILL NOT state or imply to you that we are reducing hours on your timecards because of your support for union representation.

WE WILL NOT direct you not to discuss pay issues with each other.

WE WILL NOT fail and refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees.

WE WILL NOT fail and refuse to provide the Union with requested information relevant to its duties as your representative for purposes of collective bargaining.

WE WILL NOT discharge any of you in retaliation for your activities that are protected by the Act, including the discussion of issues related to pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, recognize and, upon the Union's request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees.

WE WILL, provide the Union with the information it requested in its letter to us of September 26, 2007.

WE WILL, within 14 days from the date of this Order, offer Steven LaMont and Donald Doty full reinstatement to their former jobs or, if those jobs no longer exist,

to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Steven LaMont and Donald Doty whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Steven LaMont and Donald Doty, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

MJ MUELLER, LLC D/B/A BENJAMIN FRANKLIN PLUMBING

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 08-3385

National Labor Relations Board,

Petitioner

v.

MJ Mueller, LLC, doing business as Benjamin Franklin Plumbing,

Respondent

Appeal from National Labor Relations Board

(18-CA-18216)

(18-CA-18419)

(18-CA-18504)

MANDATE

In accordance with the judgment of 11/25/2008, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

February 27, 2009

o >

Clerk, U.S. Court of Appeals, Eighth Circuit

GC EXHIBIT

2

00-3385

Robert W. Chester
NATIONAL LABOR RELATIONS BOARD
Region 18
Suite 790
330 Second Avenue, S.
790 Towle Building
Minneapolis, MN 55401-2221

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

MJ MUELLER, LLC d/b/a BENJAMIN FRANKLIN
PLUMBING and Its Alter Ego, BoRyJer, LLC
d/b/a BENJAMIN FRANKLIN PLUMBING

and

MICHAEL J. MUELLER, AN INDIVIDUAL

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UNITED ASSOCIATION OF PLUMBERS AND
GASFITTERS, LOCAL UNION NO. 34

Cases 18-CA-18216
18-CA-18419
18-CA-18504

COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

On May 30, 2008, the National Labor Relations Board, herein called the Board, issued its Decision and Order reported at 352 NLRB No. 71. On February 27, 2009, the United States Court of Appeals for the Eighth Circuit entered a Judgment enforcing in full the Board's Order and Stipulation for Entry of Consent Judgment agreed to by Respondent on November 25, 2008. Among other things, the Board's Order directed MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, herein Respondent MJ Mueller, to offer reinstatement to employees Steven LaMont and Donald Doty, and to make them whole for any loss of earnings or benefits suffered as a result of Respondent MJ Mueller's unfair labor practices, including its termination of employees LaMont and Doty.

At no time has Respondent MJ Mueller taken any actions required by the Board's Order and the Court's Judgment.

GC EXHIBIT

3

Controversy having arisen concerning the amounts due to make LaMont and Doty whole, the undersigned Regional Director of the National Labor Relations Board for the Eighteenth Region, pursuant to the authority duly conferred upon me by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges the following:

ALTER EGO ISSUE

BoRyJer
a
1.(a) At all material times until June 30, 2008, Respondent MJ Mueller was engaged in the business of a plumbing contractor, with its office and place of business located at 36605 Lincoln Trail, North Branch, Minnesota.

(b) At all material times until June 30, 2008, Michael J. Mueller, herein called Respondent Michael J. Mueller, and Barbara Mueller were the sole owners of Respondent MJ Mueller.

(c) At all material times until June 30, 2008, Respondent MJ Mueller employed Ryan Green as a plumbing employee and Patricia Norrgard as a bookkeeper.

(d) At various times until June 30, 2008, in performing its operations as described above in subparagraph (a), Respondent MJ Mueller utilized drain machines, step and extension ladders, office desks and computers, two Chevrolet vans, one Sprinter truck and one Ford truck.

(e) At all times until June 30, 2008, Respondent MJ Mueller performed plumbing work primarily for residential customers.

BoRyJer
2.(a) On June 18, 2008, Robert Mueller, the brother of Respondent Michael J. Mueller, organized Respondent BoRyJer, LLC, herein called Respondent BoRyJer, as a Minnesota limited liability corporation.

(b) On about June 30, 2008, Respondent MJ Mueller, LLC sold all of its assets, including its Benjamin Franklin Plumbing franchise #21, to Respondent BoRyJer for \$25,000. In addition to purchasing Respondent MJ Mueller's assets for \$25,000, Respondent BoRyJer assumed \$68,566.12 of Respondent MJ Mueller's debt.

(c) At all times since June 30, 2008, Respondent BoRyJer has been doing business as Benjamin Franklin Plumbing.

(d) At all times since June 30, 2008, Respondent BoRyJer has been engaged in the business of a plumbing contractor, with an office and place of business located at 36605 Lincoln Trail, North Branch, Minnesota, and beginning in August 2008, with additional operations at 31040 Forest Boulevard, Stacy, Minnesota.

(e) At all times since June 30, 2008, Respondent BoRyJer has utilized Respondent MJ Mueller's franchise license.

(f) At all times since June 30, 2008, Respondent BoRyJer has employed Respondent Michael J. Mueller as general manager.

(g) At no time since June 30, 2008, has Robert Mueller played any role in the operation or management of Respondent BoRyJer.

(h) At various material times since June 30, 2008, Respondent BoRyJer has employed Ryan Green as a plumbing employee and Patricia Norrgard as a bookkeeper.

(i) At various times since June 30, 2008, Respondent BoRyJer has used the same equipment and vehicles as described above in subparagraph (d) of paragraph 1.

(j) At all material times since June 30, 2008, Respondent BoRyJer has performed plumbing work primarily for residential customers, including servicing the same geographical area as Respondent MJ Mueller, servicing some of the same

customers as Respondent MJ Mueller, and at times utilizing the same accounts for commercial customers as utilized by Respondent MJ Mueller.

a (k) At all material times since June 30, 2008, Respondent BoRyJer has purchased goods utilizing the same suppliers as Respondent MJ Mueller, including utilizing the accounts at suppliers that were utilized by Respondent MJ Mueller.

d 3. Respondent Michael J. Mueller engaged in the conduct described above in paragraphs 1 and 2 for the purpose of evading Respondent MJ Mueller's obligations under the Act.

denies 4.(a) Based on the operations and conduct described above in paragraphs 1 through 3, Respondent MJ Mueller and Respondent BoRyJer are, and have been at all material times, alter egos.

(b) Based on the operations and conduct described above in paragraphs 1 through 3, Respondent BoRyJer is additionally liable, jointly and severally, for remedying the unfair labor practices of Respondent MJ Mueller.

PERSONAL LIABILITY ISSUE

5. At all material times herein, Respondent Michael J. Mueller controlled the day-to-day management, labor relations policies, business operations and financial resources of Respondent MJ Mueller and Respondent BoRyJer.

6. At all times material herein, Respondent Michael J. Mueller commingled assets of Respondent MJ Mueller and of Respondent BoRyJer with his personal assets and other assets within his control.

denies liability 7. Based on the conduct described above in paragraphs 2 through 6, Respondent Michael J. Mueller is personally liable, jointly and severally, with

Respondent MJ Mueller and Respondent BoRyJer for remedying the unfair labor practices of Respondent MJ Mueller.

BACKPAY

8. At the time of their discharges, Steven LaMont and Donald Doty were employed by Respondent MJ Mueller as plumbers.

9. An appropriate measure of the earnings that Steven LaMont and Donald Doty would have received during each calendar quarter of their backpay periods is based on the actual hours worked or projected to have worked by replacement employees Ryan Green and Keith Betters, respectively. Using the replacement hours formula, the earnings determinations are based on records made available by Respondent MJ Mueller.

10. Quarterly gross backpay for the two is the total wages they would have received each calendar quarter, or portions thereof, in each calendar quarter of their backpay periods.

11. Calendar quarter net interim earnings is the difference between calendar quarter interim earnings and calendar quarter expenses.

12. Calendar quarter net backpay is the difference between calendar quarter gross backpay and calendar quarter net interim earnings.

13. The total net backpay due Steven LaMont and Donald Doty is the sum of the calendar quarters of net backpay due.

14. Specific computations for discriminatees LaMont and Doty are set forth in Appendixes A and B. All amounts are rounded to the nearest dollar.

Steven LaMont

15.(a) Steven Lamont's backpay period begins June 13, 2007, the day after his discharge on June 12, 2007. Lamont's backpay period is ongoing, inasmuch as neither Respondent MJ Mueller nor Respondent BoRyJer has offered him reinstatement to his former position in accordance with the Board's Order and Court's Judgment and replacement employee Ryan Green has been continually employed by Respondent MJ Mueller or Respondent BoRyJer. Backpay has been calculated through October 23, 2009.

(b) LaMont would have been employed as a plumber and paid a wage rate of \$23.50 per hour during the entire backpay period.

(c) It is admitted that Lamont is the sole owner of Drip Drop Plumbing, that his employment with Drip Drop began in January 2008, and that his interim earnings through May 1, 2009, are as set forth in Appendix A.

(d) Lamont's gross and net backpay by calendar quarter are as set forth in Appendix A.

Donald Doty

16.(a) Donald Doty's backpay period begins June 10, 2007, the day after his discharge on June 9, 2007. Doty's backpay period is ongoing, inasmuch as neither Respondent MJ Mueller nor Respondent BoRyJer has offered him reinstatement to his former position in accordance with the Board's Order and Court's Judgment. Backpay has been calculated through February 22, 2008, the date replacement employee Keith Betters was laid off by Respondent MJ Mueller and not replaced.

(b) Doty would have been employed as a plumber and paid a wage rate of \$25 per hour during the entire backpay period.

(c) It is admitted that Doty is the sole owner of Doty's Plumbing, that his employment at Doty's began approximately July 1, 2007, and that his interim earnings through February 22, 2008, are as set forth in Appendix B.

(d) Doty's gross and net backpay by calendar quarter are as set forth in Appendix B.

17. Summarizing the facts and calculations specified above and in Appendixes A and B, the obligation of Respondent MJ Mueller and Respondent BoRyJer, jointly and severally, and Respondent Michael J. Mueller, individually, to make whole the discriminatees through May 31, 2009, under the Board's Order will be discharged by the payment of the amounts described below, plus interest:

Steven LaMont	\$50,302
Donald Doty	\$11,783
Total	\$62,085

Respondent MJ Mueller, Respondent BoRyJer and Respondent Michael J. Mueller, individually, are notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, each must file an answer to the compliance specification. The answers must be **received by this office on or before November 19, 2009, or postmarked on or before November 18, 2009.** Respondent MJ Mueller, Respondent BoRyJer and Respondent Michael J. Mueller, individually, should each file an original

and four copies of their answers with this office and serve a copy of the answers on each of the other parties.

Answers may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless the Agency's E-Filing system is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-Filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent MJ Mueller, Respondent BoRyJer, or Respondent Michael J. Mueller, individually, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the knowledge of Respondent MJ Mueller, Respondent BoRyJer, or Respondent Michael J. Mueller, individually, and set forth in detail positions as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed by Respondent MJ Mueller, or by Respondent BoRyJer, or by Respondent Michael J. Mueller, individually, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If each answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent MJ Mueller, Respondent BoRyJer or Respondent Michael J. Mueller from introducing any evidence controverting those allegations.

PLEASE TAKE NOTICE that on **January 7, 2010, at 9:00 a.m.**, in the **NLRB Hearing Room, Suite 790, 330 South Second Avenue, Minneapolis, Minnesota**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent MJ Mueller, Respondent BoRyJer and/or Respondent Michael J. Mueller

and all other parties to this proceeding will have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Minneapolis, Minnesota, this 29th day of October, 2009.



Marlin O. Osthus, Regional Director
Eighteenth Region
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

Attachments

APPENDIX A

CLAIMANT: Steven LaMont

BACKPAY PERIOD: June 13, 2007 to date (calculated through October 23, 2009)

Year	Qtr.	Gross Backpay	Net Interim Earnings	Net Backpay
2007	2nd	0	0	0
2007	3rd	10,675	1,671	9,004
2007	4th	11,976	0	11,976
2008	1st	13,386	9,348	4,038
2008	2nd	13,386	9,348	4,038
2008	3rd	13,386	9,348	4,038
2008	4th	13,386	9,348	4,038
2009	1st	13,386	9,348	4,038
2009	2nd	13,386	9,348	4,038
2009	3rd	13,386	9,348	4,038
2009	4th	3,501	2,445	1,056
Total:		119,854	69,552	50,302

Notes:

All amounts are rounded to the nearest dollar.

Gross backpay is based on hours worked or projected to have been worked by replacement employee Ryan Green during backpay period, multiplied by LaMont's hourly wage.

Gross backpay amounts based on records furnished by the Respondent through December 2008.

Backpay period is ongoing since Green was hired by alter ego BoRyJer, LLC in July 2008 with no break in employment.

Hourly wage used in Gross backpay computation is \$23.50 per hour, LaMont's wage at the time of his discharge.

Interim earnings for 2007 include \$1,670.83 earned at one job when employed by Doty's Plumbing.

In January 2008, LaMont began his own plumbing business, Drip Drop Plumbing, Inc, where he is currently employed.

Interim earnings for 2008 based on IRS filing, \$37,392 divided by 4 quarters = \$9,348 per quarter.

Since LaMont is self employed, expenses related to interim employment are included in IRS tax filings, and thus are included but not detailed in the Net Interim Earnings shown.

Interim earnings for 2009 1st and 2nd quarters based on average quarterly earnings for 2008; \$9,348.

APPENDIX B

CLAIMANT: Donald Doty

BACKPAY PERIOD: June 10, 2007 to February 22, 2008

#	Year	Qtr.	Gross Backpay	Net Interim Earnings	Net Backpay
	2007	3rd	7,784	5,524	2,260
	2007	4th	14,376	5,524	8,852
	2008	1st	6,718	6,047	671
Total:			\$28,878	\$17,095	\$11,783

Notes:

All amounts are rounded to the nearest dollar.

Gross backpay is based on actual hours worked by replacement employee Keith Betters during the backpay period.

Hourly wage used in Gross Backpay computation is \$25 per hour, Doty's wage at the time of his discharge

Backpay period ends when Betters was laid off (February 22, 2008) and not replaced. Backpay period could resume if Betters or another replacement plumber is hired.

2007 interim earnings based on IRS 1040 statement for 2007, adding lines 12 (business income) and 7 (wages, salaries, etc) and subtracting from that, income from Ben Franklin Plumbing. The result is $\$5,652 + \$6561 = \$12,213$ - $\$1165 = \$11,048$.

Dividing \$11,048 by 2 quarters equals \$5,524 interim earnings per quarter for 2007.

2008 interim earnings are based on average weekly net income of \$465.12 from Doty's Plumbing.

Since Doty is self employed, expenses related to interim employment are included in IRS tax filings, and thus are included but not detailed in the Net Interim Earnings shown.

Sec. 102.56 Answer to compliance specification.

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

R & R

102.57-102.59

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case: 18-CA-18216 et al

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

BoRyJeR, LLC
d/b/a Benjamin Franklin Plumbing
31042 Forest Boulevard
Stacy, MN 55079
(Return Receipt Requested)

Nicole M. Blissenbach, Attorney
Miller O'Brien Cummins PLLP
2400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
(For the Charging Party)

Mr. Michael Mueller
36605 Lincoln Trail
North Branch, MN 55056
(Return Receipt Requested)

Rick Klein, Organizer
United Association of Plumbers and Gasfitters,
Local Union No. 34
Labor Centre
411 Main, Room 215
St. Paul, MN 55102

BoRyJeR, LLC
d/b/a Benjamin Franklin Plumbing
Attn: Robert Mueller
7334 Highway 29
Meadowlands, MN 55765
(Return Receipt Requested)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MJ MUELLER, LLC d/b/a BENJAMIN FRANKLIN PLUMBING
and Its Alter Ego, BoRyJer, LLC d/b/a BENJAMIN FRANKLIN
PLUMBING

and

MICHAEL J. MUELLER, AN INDIVIDUAL

and

UNITED ASSOCIATION OF PLUMBERS AND GASFITTERS,
LOCAL UNION NO. 34

Cases 18-CA-18216
18-CA-18419
18-CA-18504

DATE OF MAILING October 29, 2009

AFFIDAVIT OF SERVICE OF Compliance Specification and Notice of Hearing dated October 29, 2009

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the following persons, addressed to them at the following addresses:

Certified Mail:

BoRyJeR, LLC
d/b/a Benjamin Franklin Plumbing
31042 Forest Boulevard
Stacy, MN 55079
(Return Receipt Requested)

Mr. Michael Mueller
36605 Lincoln Trail
North Branch, MN 55056
(Return Receipt Requested)

BoRyJeR, LLC
d/b/a Benjamin Franklin Plumbing
Attn: Robert Mueller
7334 Highway 29
Meadowlands, MN 55765
(Return Receipt Requested)

First Class Mail:

Nicole M. Blissenbach, Attorney
Miller O'Brien Cummins PLLP
2400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
(For the Charging Party)

Rick Klein, Organizer
United Association of Plumbers and Gasfitters,
Local Union No. 34
Labor Centre
411 Main, Room 215
St. Paul, MN 55102

GC EXHIBIT

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Subscribed and sworn to before me this 29th day of
October, 2009.

DESIGNATED AGENT

[Signature]
NATIONAL LABOR RELATIONS BOARD



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 18
330 South Second Avenue
Suite 790
Minneapolis, MN 55401-2221

Office: (612) 348-1757
Fax: (612) 348-1785
www.nlrb.gov

November 20, 2009

Mr. Michael Mueller
36605 Lincoln Trail
North Branch, MN 55056

Mr. Robert Mueller
BoRyJer, LLC d/b/a Benjamin Franklin
Plumbing
7334 Highway 29
Meadowlands, MN 55765

Re: MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing and
Its Alter Ego, BoRyJer, LLC d/b/a Benjamin Franklin Plumbing
and Michael J. Mueller
Cases 18-CA-18216, 18-CA-18419 and 18-CA-18504

Gentlemen:

On October 29, 2009, I issued a Compliance Specification and Notice of Hearing in the above-captioned cases, a copy of which is enclosed. The Compliance Specification sets a hearing date of January 7, 2010, and requires you to file answers on or before November 19, 2009, on behalf of MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing; on behalf of BoRyJer, LLC d/b/a Benjamin Franklin Plumbing; and on behalf of Michael J. Mueller, individually. The Compliance Specification further notes that if no answers are filed, the National Labor Relations Board may find that the allegations in the Compliance Specification are true, without a hearing and pursuant to a Motion for Default Judgment.

If you wish to contest the allegations in the Compliance Specification, MJ Mueller, LLC, BoRyJer, and Michael J. Mueller as an individual must each file an answer as described in the Compliance Specification.

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November 20, 2009

Finally, if this office does not receive one or more answers on or before November 27, I intend to postpone the January 7 hearing indefinitely and file a Motion for Default Judgment. If you have any questions about this matter, please call Attorney David M. Biggar at (612) 348-1773.

Sincerely,



Marlin O. Osthus
Regional Director

MOO/paj
Enclosure

cc:

Mr. Michael Mueller
BoRyJer, LLC d/b/a Benjamin Franklin
Plumbing
31040 Forest Boulevard
Stacy, MN 55079
(with enclosure)

Mr. Robert Mueller
BoRyJer, LLC d/b/a Benjamin Franklin
Plumbing
31040 Forest Boulevard
Stacy, MN 55079
(with enclosure)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

MJ MUELLER, LLC d/b/a/ BENJAMIN
FRANKLIN PLUMBING and its Alter Ego,
BoRyJer, LLC d/b/a BENJAMIN FRANKLIN
PLUMBING

and

MICHAEL J. MUELLER, AN INDIVIDUAL

and

UNITED ASSOCIATION OF PLUMBERS
AND GASFITTERS, LOCAL UNION NO. 34

Cases: 18-CA 18216
18-CA-18419
18-CA-18504

Separate Answer of BoRyJer, LLC d/b/a Benjamin Franklin Plumbing

Pursuant to Section 102.56 of the Board's Rules and Regulations, Respondent BoRyJer, LLC hereby files this Separate Answer to the Compliance Specification in the above-captioned matter.

Respondent BoRyJer, LLC (hereinafter "Respondent") hereby admits, denies, and alleges as follows:

1. Respondent admits on information and belief the allegations contained in Paragraphs 1(a), (b), (c), (d), and (e) of the Compliance Specifications.
2. Respondent admits the allegations contained in Paragraphs 2(a), (b) and (c) of the Compliance Specifications.
3. With respect to Paragraph 2(d) of the Compliance Specifications, Respondent states that at all times since June 30, 2008, Respondent has been engaged in the business of a

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plumbing contractor but states that its official business address is 7334 Highway 29, Meadowlands, Minnesota 55765.

4. With respect to Paragraph 2(e) of the Compliance Specifications, Respondent states that at all times since June 30, 2008, Respondent has utilized its own franchise license purchased from MJ Mueller.

5. With respect to the allegations contained in Paragraph 2(f) of the Compliance Specifications, Respondent states that it has employed Michael J. Mueller since on or about June 30, 2008.

6. Respondent denies the allegations contained in Paragraph 2(g) of the Compliance Specifications.

7. Respondent admits the allegations contained in Paragraph 2(h) of the Compliance Specifications.

8. With respect to the allegations contained in Paragraph 2(i) of the Compliance Specifications, Respondent admits that, among other equipment and vehicles, Respondent has used the equipment and vehicles purchased from MJ Mueller, LLC.

9. With respect to the allegations contained in Paragraph 2(j), Respondent admits that in addition to other plumbing and service work, Respondent performs plumbing work for residential customers including servicing the geographical area previously served by MJ Mueller, LLC and certain other commercial customers previously serviced by MJ Mueller, LLC.

10. With respect to the allegations contained in Paragraph 2(k) of the Compliance Specifications, Respondent states that, as a plumbing contractor, it naturally has utilized suppliers that are the same as or similar to those utilized by MJ Mueller and that accounts at some of those suppliers were transferred to Respondent upon its purchase of MJ Mueller, LLC.

11. Respondent denies for lack of knowledge the allegations contained in Paragraph 3 of the Compliance Specifications.

12. Respondent denies the allegations contained in Paragraphs 4(a) and (b) of the Compliance Specifications.

13. With respect to the allegations contained in Paragraph 5 of the Compliance Specifications, Respondent states that Michael J. Mueller is and has at all relevant times been employed by Respondent as its general manager pursuant to an employment agreement that specifies the duties to be performed which, together with the franchise agreement obligations describe the actual nature of Mr. Mueller's work on behalf of Respondent.

14. With respect to the allegations contained in Paragraph 6 of the Compliance Specifications, Respondent states that, on information and belief, certain MJ Mueller, LLC assets were inadvertently comingled with Respondent's assets until additional and clearer financial controls were in place.

15. With respect to the allegations contained in Paragraph 7 of the Compliance Specifications, Respondent denies joint or several liability and any liability for the unfair labor practices allegedly committed by MJ Mueller, LLC or any other person or entity.

16. Respondent admits on information and belief the allegations contained in Paragraph 8 of the Compliance Specifications.

17. With respect to the allegations contained in Paragraph 9, 10, 11, 12 and 14 of the Compliance Specifications, Respondent states that these are mere legal conclusions as to the "appropriate measure" of earnings in question and as to the calculation approach referenced in each of said paragraphs.

18. With respect to the allegations contained in Paragraph 13 of the Compliance Specifications, Respondent denies that as to it, any "net back pay" is due.

19. With respect to the allegations contained in Paragraph 15(a) of the Compliance Specifications, Respondent denies liability for any alleged back pay for any alleged back pay period and denies its alleged status as an alter ego of Respondent MJ Mueller, LLC.

20. With respect to the allegations contained in Paragraph 15(b) of the Compliance Specifications, Respondent states that had Mr. Lamont been employed as a plumber for Respondent, the more appropriate comparative rate of pay would be that currently paid to employee plumber Ryan Green who presently receives \$16.75 per hour.

21. Respondent admits on information and belief the allegations contained in Paragraph 15(c) of the Compliance Specifications.

22. With respect to the allegations contained in Paragraph 15(d) of the Compliance Specifications, Respondent challenges the calculation due to the rate of pay selected and Respondent further asserts that it has no liability for paying any "net back pay."

23. With respect to the allegations contained in Paragraph 16(a) of the Compliance Specifications, Respondent denies liability and reiterates that it was not the employer of record at the time of Mr. Doty's discharge nor at the time employee Keith Betters was laid off by Respondent MJ Mueller. Respondent admits on information and belief that employee Keith Betters was never hired and that Respondent currently employs one plumber in addition to Michael Mueller as general manager.

24. With respect to Paragraph 16(b), Respondent denies for lack of knowledge and as speculative any amounts that "would have" been paid to Mr. Doty.

25. Respondent denies for lack of knowledge the allegations contained Paragraph 16(c) of the Compliance Specifications.

26. Respondent denies any liability for the claimed gross and net back pay amounts reflected in Paragraph 16(d) of the Compliance Specifications.

27. With respect to the allegations contained in Paragraph 17 of the Compliance Specifications, Respondent denies that it is jointly or severally liable for any back pay as reflected in Paragraph 17.

AFFIRMATIVE DEFENSES

1. Respondent is not now nor has it ever been the "alter ego" or otherwise made itself legally liable for any of the debts or obligations of MJ Mueller, LLC.

2. All the legal obligations of Respondent and the limitations of any legal obligations on Respondent are contained and reflected in the Asset Purchase Agreement between MJ Mueller, LLC and Respondent including, but not limited to, the "poison pill" provisions contained in Section 9.17 of that Asset Purchase Agreement.

Dated: December 1, 2009

FENHABER, LARSON, FENLON & VOGT, P.A.

By: 

Paul J. Zech, #162450

Brian T. Benkstein, #325545

220 South Sixth Street, Suite 2200

Minneapolis, Minnesota 55402

(612) 339-6321

ATTORNEYS FOR RESPONDENT

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>Rosalee Anderson</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Mr. Michael Mueller 36605 Lincoln Trail North Branch, MN 55056 18-CA-18216 dlh comp spec		B. Received by (Printed Name) <i>Rosalee Anderson</i> C. Date of Delivery <i>10-30-09</i> D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:	
2. Article Number (Transfer from service label) <i>7006 2760 0000 9730 5288</i>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

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NATIONAL LABOR RELATIONS BOARD
REGION 18
330 South Second Avenue
Suite 790
Minneapolis, MN 55401-2221

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OCT 31 2009

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2009, I served the foregoing Motion for Partial Default Judgment, Brief of Counsel for the General Counsel in Support of Motion for Partial Default Judgment, Table of Exhibits, and Exhibits by U.S. Mail on the following parties:

Mr. Michael J. Mueller
MJ Mueller, LLC d/b/a Benjamin
Franklin Plumbing
36605 Lincoln Trail
North Branch, MN 55056

Mr. Michael J. Mueller
36605 Lincoln Trail
North Branch, MN 55056

Mr. Michael J. Mueller
36539 Lincoln Trail
North Branch, MN 55056

BoRyJer, LLC d/b/a Benjamin
Franklin Plumbing
31040 Forest Boulevard
Stacy, MN 55079

BoRyJer, LLC d/b/a Benjamin
Franklin Plumbing
Attn: Robert Mueller
7334 Highway 29
Meadowlands, MN 55765

Rick Klein, Organizer
United Association of Plumbers and
Gasfitters, Local Union No. 34
Labor Centre
411 Main Street, Room 215
St. Paul, MN 55102

Nicole M. Blissenbach, Attorney
Miller O'Brien Cummins PLLP
2400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402

Paul J. Zech, Attorney
Felhaber Larson Fenlon & Vogt P.A.
220 South 6th Street
Suite 2200
Minneapolis, MN 55402-4504

/s/ David M. Biggar

David M. Biggar
Counsel for the General Counsel